

Notice of Allowability

Application No.

10/065,704

Examiner

William Jung

Applicant(s)

FISHER ET AL.

Art Unit

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to February 7, 2005.
2. ☒ The allowed claim(s) is/are 1-37,64-71 and 79.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 12022003
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 5/25/05
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.


ALI IMAM
PRIMARY EXAMINER

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Ronald E. Smith (Reg. No. 28,761) on May 25, 2005 and September 28, 2005.

The application has been amended as follows:

Please cancel claims 38-63 and 72-78.

In claim 1, line 4, delete "an attachment means of straight configuration" and insert therefore ---a straight configuration attachment means for engaging tissue---.

In claim 1, line 5, after "marker and said" insert --- straight configuration---.

In claim 1, line 9, after "cavity" delete "means".

In claim 1, line 10, after "bending of said" insert --- straight configuration---.

In claim 1, line 10, after "when said" insert --- straight configuration---.

In claim 1, line 11, after "cavity" delete "means".

In claim 1, line 12, after "anvil" delete "means".

In claim 1, line 16-17, delete "there being tissue pulled" and insert therefore ---where said vacuum pulls tissue---.

In claim 1, line 19, delete "tissue pulled" and insert therefore ---vacuum pulls tissue---.

In claim 1, line 19, delete "said vacuum being impaled by" and insert therefore ---impaling---.

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In claim 1, line 20, after first “said” insert --- straight configuration---

In claim 1, line 22, after “end of said” insert --- straight configuration---

In claim 1, line 23, after “cavity” delete “means”.

In claim 1, line 25, after “marker and said” insert --- straight configuration---

In claim 1, line 27, after “marker and said” insert --- straight configuration---

In claim 2, line 1, after “said” insert --- straight configuration---

In claim 3, line 1, after “said” insert --- straight configuration---

In claim 5, line 1, after “marker” delete “means”.

In claim 5, line 3, after “attachment means” insert ---for engaging a tissue---

In claim 5, line 4, after “marker” delete “means”.

In claim 5, line 7, after “anvil” delete “means”.

In claim 5, line 10, after “marker” delete “means”.

In claim 5, line 10, delete “so that” and insert therefore ---to pull said--- and delete “is pulled”.

In claim 5, line 17, after “marker” delete “means”.

In claim 5, line 18, delete “passes through” and insert therefore ---pulls said--- and delete “that has been pulled”.

In claim 5, line 23, after “marker and said” insert “straight”.


In claim 5, line 23, after “end of said” insert “straight”.

In claim 5, line 24, after “and of said” insert “straight”.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Jung, Ph.D. whose telephone number is 571-272-4739. The examiner can normally be reached on Mon-Fri 8:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


September 28, 2005


ALI IMAM
PRIMARY EXAMINER